

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Timothy Farnum and Trevor Huster

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**DATE:** April 7, 2017

**SUBJECT:** Proposed initiative measure 2017-2018 #29, concerning prohibiting sales of smartphones to minors under the age of 13.

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

An earlier version of this proposed initiative, proposed initiative 2017-2018 #19, was the subject of a memorandum dated March 22, 2017. Proposed initiative 2017-2018 #19 was discussed at a public meeting on March 28, 2017. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

## **Purposes**

The major purpose of the proposed amendment to the Colorado Revised Statutes appears to be to prohibit the sale of a smartphone to a preteen minor or if the purchaser states that the smartphone will be wholly or primarily owned by a preteen minor.

## **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. In section 24-35-704 (5) and (6), it appears that the retailer has a duty to do something. If so, using the term "shall" creates that duty rather than using the term "must".
3. The definition of "smartphone" in section 24-35-703 (1) should be limited to terms that define "smartphone". The provisions in the sentence further defining "smartphone" may be best added to the initial definition to create more clarity.
4. In section 24-35-704 (7), the proposed initiative creates a filing fee. The fee is \$20 for the first year of the measure and then changes yearly based on the needs of the department of revenue to keep the measure revenue-neutral. The proposed initiative should address the mechanism that the department uses to change the fee.
5. In section 24-35-707 (4), the proposed initiative creates a fine structure for failure to file the report or pay the filing fee.
  - a. Although the introductory portion to subsection (4) states that it applies to both failing to file the report and to pay the filing fee, subsection (4)(a) only references the report. If subsection (4)(a) is intended to cover both failing to file the report and failure to pay the filing fee, it should also make reference to failure to pay the filing fee. If the fee violations are not included, then the reference to subsection (7) in the introductory portion of subsection (4) should be removed.
  - b. The introductory portion to subsection (4) states that noncompliance is deemed to have occurred 90 days after the end of the month for which the report was due. There are then fines associated with 31 to 60 days

and 61 to 89 days, which would seem to conflict with the statement that the violation occurs 90 days after the end of the month.

- c. In subsections (4)(a)(I) and (4)(a)(II), the proposed initiative uses the term "from". That term is vague. Please clarify the intent of the proposed initiative.
  - d. In subsection (4)(a), the proposed initiative states, "prior to 90 days the fines . . . shall be as follows". Then subsection (4)(a)(III) seems to address the fines which are for 90 days or more. This is confusing. Please clarify your intent.
6. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
- a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
  - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
  - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at [BallotImpactEstimates.ga@state.co.us](mailto:BallotImpactEstimates.ga@state.co.us).

## Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

- 1. In the amending clause, the proposed initiative states, "add Part 7 to article 35 section 24". It should state "**add** part 7 to article 35 of title 24".
- 2. The proposed initiative uses strike type to show language that has been stricken from the previous submittal. It is not necessary to use the strike type. The language can simply be omitted.

3. In the introductory portion of section 24-35-703, the proposed initiative states, "As used in this 24-35-7". Instead, it should state "As used in this part 7".
4. It is standard drafting practice for definitions to be listed in alphabetical order.
5. It is standard drafting practice in definitions to say that the defined term "means" rather than "is defined as".
6. In section 24-35-703 (1), the comma after "connectivity" in the second sentence should be removed.
7. The citation in section 24-35-703 (6), "section 42-5-105 (2)(b)(I)(II)(III)(IV)", should be shortened to "section 42-5-105 (2)(b)".
8. The headnotes for sections 24-35-704 through 24-35-708 appear to be in small caps. They should be in regular, bold type.
9. The following places need punctuation at the end of the sentence:
  - a. Section 24-35-703 (6);
  - b. Section 24-35-704 (1);
  - c. Section 24-35-704 (6)(a) and (6)(b);
  - d. Section 24-35-705 (2)(a), (2)(b), and (2)(c);
  - e. Section 24-35-707 (4)(a)(I), (4)(a)(II), and (4)(a)(III).
10. The headnotes for sections 24-35-704 and 24-35-705 use a period between phrases and capitalize the first word in each phrase. Rather than a period to offset the phrases, a dash should be used. Additionally, only the first word in the headnote should be capitalized.
11. In section 24-35-704 (3), the comma after "wholly" should be removed.
12. In section 24-35-704 (7), there needs to be a verb after "retailer".
13. The terms "Department" and "Executive Director" should not be capitalized unless the term begins a sentence.
14. In section 24-35-705 (2)(a), the term "monthly report" needs an article preceding it.
15. In section 24-35-705 (2)(b), there needs to be a semicolon and an "and" at the end of the phrase.
16. In section 24-35-706 (5), "any", which begins the second sentence, should be capitalized.

17. In section 24-35-706 (6), "Attorney General" should not be capitalized.
18. In section 24-35-706 (7), the proposed initiative states, "administration of section 24-35-7,". Rather, it should state, "administration of this part 7,".
19. In section 24-35-707 (4), the proposed initiative uses the phrase "and/or". It is inappropriate to use "and/or" in statute. The proposed initiative must select either "and" or "or".
20. In section 24-35-707 (4), there are many numeric references. The numeric references should be words, not numerals.
21. For section 24-35-708, standard drafting practice would have the effective date read, "This part 7 takes effect January 1, 2019."